

September 8, 2003

BY ELECTRONIC FILING

William Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte Communication*
In the Matter of Performance Measurements and Standards for
Interstate Special Access Services, CC Docket No. 01-321; Review
of Regulatory Requirements for Incumbent LEC Broadband
Telecommunications Services, CC Docket No. 01-337; and
Section 272(f)(1) Sunset of the BOC Separate Affiliate and
Related Requirements, WC Docket No. 02-112; 2000 Biennial
Regulatory Review Separate Affiliate Requirements of Section
64.1903 of the Commission's Rules, CC Docket No. 00-175

Dear Mr. Maher:

As you know, the Joint Competitive Industry Group (JCIG) has urged the Commission to adopt the special access measurements, standards, reporting requirements and enforcement plan¹ that JCIG has proposed in the ongoing proceeding on interstate special access services (*Special Access Metrics Proceeding*).² We are writing you because of the close relationship between that proceeding and two other rulemakings currently pending before the FCC. In one proceeding, the Commission is examining the potential effects of the expiration of the Bell Operating Companies' (BOCs') separate affiliate requirements (*Section 272 Safeguards Proceeding*).³ In the other proceeding, the FCC is reviewing the dominant treatment of broadband telecommunications services

¹ See, e.g., Attachment A to letter from Joint Competitive Industry Group to Michael Powell, Chairman, FCC (Jan. 22, 2002) and letter from Joint Competitive Industry Group to Michael Powell, Chairman, FCC, attached to letter from A. Richard Metzger, Jr. to William Caton, FCC (Feb. 12, 2002), filed in CC Docket No. 01-321.

² *Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, CC Docket No. 01-321, 16 FCC Rcd 20896 (rel. Nov. 19, 2001) (*Special Access Metrics Proceeding*).

³ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Further Notice of Proposed Rulemaking, WC Docket No. 02-112, 18 FCC Rcd 10914 (rel. May 19, 2003).

offered by incumbent local exchange carriers (LECs) (*Broadband Dominance/Non-Dominance Proceeding*).⁴

In each docket, the Commission is considering changes to its rules that would relax the regulation of certain services offered by incumbent LECs. Although the JCIG coalition has not participated in either of those two proceedings and takes no position as a coalition on the merits of the various proposals under consideration, the members of JCIG are unanimous in their view that the Commission must first adopt the comprehensive JCIG proposal in the *Special Access Metrics Proceeding* before taking action in the other two proceedings. Specifically, as discussed below, the Commission should move promptly to adopt the JCIG plan for improving the incumbent LECs' provisioning and maintenance of special access before it addresses the proposals under consideration in the *Section 272 Safeguards Proceeding* and the *Broadband Dominance/Non-Dominance Proceeding*.

Without question, special access services provided by incumbent LECs are critical to the competitive provision of interLATA and broadband services offered to enterprise customers. Firms providing interLATA services, both wireline and wireless, in competition with those that BOCs must offer through section 272 separate affiliates⁵ require just, reasonable and non-discriminatory access to incumbent LEC-provided special access services. Those dedicated circuits link the premises of enterprise customers to the facilities of the BOCs' competitors. Similarly, carriers that offer enterprise customers services that are the subject of the *Broadband Dominance/Non-Dominance Proceeding*, principally frame relay and ATM services, also depend on the availability of efficient high-speed special access links that the incumbent LECs are required to provide on a non-discriminatory basis. For example, competitive wireline carriers offering frame relay and ATM services rely heavily on incumbent LEC-provided DS3, DS1, DS0 and DSL special access links for the "last mile" connection between the premises of enterprise customers and the competitive carriers' networks. In addition, wireless carriers offering services in competition with incumbent LECs and their affiliates depend on incumbent-LEC-provided special access links to connect cell sites to mobile switching centers.

Because incumbent LEC special access services are a key input in the competitive provision of the frame relay and ATM services that are the subject of the *Section 272 Safeguards Proceeding* and the *Broadband Dominance/Non-Dominance Proceeding*, competitive carriers will not be able to offer these services in competition with their suppliers – the incumbent LECs – without timely, non-discriminatory provisioning of special access. Consequently, to the extent that Commission proposals to relax or streamline regulation in the *Section 272 Safeguards* and the *Broadband Dominance/Non-*

⁴ *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, CC Docket No. 01-337, 16 FCC Rcd 22745 (rel. December 20, 2001).

⁵ 47 U.S.C. § 272.

Dominance proceedings are predicated on the existence of robustly competitive retail markets for in-region interLATA and broadband services to enterprise customers, the adoption and implementation of the JCIG proposal is an essential safeguard for ensuring that precondition is satisfied. The Commission, therefore, should bring the *Special Access Metrics Proceeding* to a prompt conclusion by adopting the JCIG proposal, and should not consider the substantive issues presented in the *Section 272 Safeguards* and *Broadband Dominance/Non-Dominance* proceedings until this safeguard is in place.

In accordance with the Commission's rules, this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

The Joint Competitive Industry Group

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